IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO.3117 OF 1986

1. M/s. National Textile Corporation Ltd.
   New Delhi, a Government Company incorporated under the Companies Act 1 of 1956 having its registered office at Surya Kiran Building, Kasturba Gandhi Marg, New Delhi.

2. M/s. National Textile Corporation (S.M.) Ltd.,
   a Government Company incorporated under the Companies Act 1 of 1956, having its registered office at N.T.C. House, 13, M.M. Marg, Ballard Estate, Bombay-400 038.

3. National Textile Corporation (MN_ Ltd.,
   A Government Company incorporated under the Companies Act I of 1956, having its registered Office at NTC House, 15, N.M.Marg, Ballard Estate, Bombay-400 038.

....Plaintiffs.

Vs.

M/s. J. Jayantilal,
firm carrying on business at 136/37, Dadar Galli, M.J.Market, Bombay-400 002.

....Defendants.

Ms. Swapnila Rane for the Plaintiffs.

CORAM: A.S.OKA, J.
DATE : 21st September, 2007

ORAL JUDGMENT

1. The plaintiffs have filed this suit for recovery of a sum of Rs.2,55,310.00 with future interest on the principal amount at the rate of 21% per annum. The amount in respect of which the recovery is sought was due and payable to Shree Sitaram Mill. By virtue of operation of law, now the said Sitaram Mill stands transferred to the third plaintiff i.e. National

Textile Corporation (MN) Ltd. According to the case of the plaintiffs there were dealings between the said Sitaram Mill (hereinafter referred to as the "said Mill") with defendants whereby the said Mill used to deliver cloth material to the defendants. By letter dated 25th September,1984 the plaintiffs called upon the defendants to pay a sum of Rs.1,69,559.29ps. being the amount due and payable by the defendants at the foot of the account as on 18th October,1983. According to the case of the plaintiffs, the claim was made on the basis of the account of the defendants maintained by the said Mill. As the amount was not paid, present suit has been filed.

2. The defendants filed written statement denying the liability. The written statement of the defendants is of general denials. A plea of bar of limitation is also raised in the written statement.

3. Following issues were settled on 14th March, 2006.

1) Whether the defendants prove that the claim is barred by Limitation?

2) Whether the defendants prove that the plaint is not verified as per the provisions of the Civil Procedure Code?

3) Whether the plaintiffs prove that goods worth Rs.1,69,559.29 have been delivered by them to the defendants?

4) Whether the plaintiffs are entitled to decree of Rs.2,55,310/- with future interest @ 21% per annum from the defendants?

4. The plaintiffs have filed an affidavit in lieu of evidence of Shri.V.S.Jadhav, Manager (Personnel & I.R.) of the plaintiffs. The evidence of the said witness was recorded in the court on 17th September, 2007. The plaintiffs have produced certain documents alongwith a list. As none appeared for the defendants, cross examination of the said witness was treated as closed. The suit was ordered to be listed on 21st September,2007 i.e. today for recording of evidence of the witness of the defendants. The defendants and their Advocate are absent when the matter is called out. Hence, I have heard the submissions advanced by the learned counsel for the plaintiffs after treating the evidence of the plaintiffs as closed.

5. Perusal of the affidavit in lieu of evidence and the documents produced by the plaintiffs show that the fact that there were dealings by the said Mill with the

defendants for supply of cloth material has been proved and the same has not been challenged. The plaintiffs have produced a Statement of Account of the defendants maintained by the said Mill. The plaintiffs have also produced office copies of the Gate Passes showing that the cloth material was despatched by the said Mill to the defendants. Office copies of the Work Sheets giving all the details of the material supplied to the defendants have been produced by the plaintiffs. The evidence of Shri. V.S.Jadhav has gone unchallenged. In the evidence all the particulars of the bills issued by the said Mill to the defendants have been set out. Thus, the claim of the plaintiffs has been duly proved by the evidence of Shri.V.S.Jadhav and the liability of the defendants has been established. The plaintiffs have claimed further interest at the rate of 21% per annum on the principal amount. There is no agreement between the said mill and the defendants to pay the interest on the outstanding dues at a particular rate. Considering the facts and circumstances of the case further interest will have to be granted at the rate of 9% per annum.

6. Hence, suit is decreed as prayed with a modification that the interest payable on principal amount of Rs.1,69,559.29ps. will be at the rate of 9% per annum from the date of institution of the suit till the date

of payment or realization.

7. Certified copy is expedited.

(A.S. OKA, J.)